IN THE

United States District Court

FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION

No. 283 – Admiralty

HYLAS N. HASTINGS,
Libelant

v.

CARL D. MANN, t/a
Mann's Harbor Marina,
Mann's Harbor,
North Carolina
Respondent

OPINION and ORDER

LARKINS, District Judge:

SUMMARY

This is an action in admiralty brought to recover damages for personal injuries allegedly sustained by libellant while he was standing on respondent's boat ramp attempting to launch a small outboard motorboat. The respondent has filed an exception to the libel

and a motion to dismiss on the ground that the cause does not come within admiralty jurisdiction. Both parties have submitted memoranda pursuant to the motion and, at the request of the court, they have stipulated as to the description and construction of the boat ramp. A photograph of the ramp was also submitted.

Having fully considered the pleadings, briefs, and stipulations, the court makes the following

FINDING OF FACT

At the time of the accident the respondent was a resident and citizen of the State of North Carolina, and traded as Mann's Harbor Marina at Mann's Harbor, North Carolina.

On or about April 19, 1963, the libelant paid to the respondent one dollar ($1.00) for the use of respondent's boat ramp to launch libelant's outboard motorboat. The ramp sloped and was partially submerged by the waters of Pamlico Sound, a navigable body of water. Libelant was standing on the ramp in the water to launch his boat at which time he fell and was injured. He alleges that his injury was caused by the unsafe condition of the ramp.

The following stipulations which the litigants entered into are adopted as facts by the court:

1. The ramp is constructed of creosoted lumber lying on the ground on the respondent's property, and extends to and beyond the shore line into the water

along the bottom approximately seven to eight feet depending upon the tide, the extreme end of the ramp under the water being about four feet below the surface of the water depending upon the tide.

2. The ramp is flush and level with the ground attached to sills buried into the ground.

3. The ramp does not float with the tide but is bolted and attached to the ground with stobs and creosote posts.

4. The ramp is used to accommodate boat trailers which are backed onto the ramp by automobiles or trucks.

The sole question for the court is: Do these facts, as alleged and stipulated, constitute a claim upon which relief can be granted within the jurisdiction of admiralty?

CONCLUSIONS OF LAW

In 2 Am. Jur. 2d Admiralty § 82 the following summary is made:

> "Except in the case of death resulting from the tort, the general rule is that the place where the injury or damage occurred, not where the tort occurred, determines whether it occurred on navigable waters or on land. For the purpose of determining admiralty jurisdiction, the tort is deemed to occur, not

where the wrongful act or omission has its inception, but where the impact of the act or omission produces such injury as to give rise to a cause is that of the thing injured, not that of the agency causing the injury. Where, for example, a floating vessel is damaged by a structure on the land, as in a collision with a drawbridge, the tort is maritime. Conversely, admiralty is without jurisdiction in case of tortious injury to persons or tortious damage to property, where the consummation of the tort is on the land though it may have originated on the water, except as this rule is modified by the Admiralty Jurisdiction Extension Act of 1948."

Section 84 sets forth this observation:

"Docks and wharves are considered to be extensions of the land to which they are attached, so that admiralty ordinarily has no jurisdiction of a tort that occurs on a dock or a wharf, or any other extension of the land. . . ."

2 C. J. S. Admiralty § 62 reads, in part, as follows: ". . . A suit for an injury on land, as where an injury is sustained on a wharf or dock or on a gangplank by a person leaving the dock, or in an excavation under water, is without the jurisdiction of admiralty. . . ."

What the court is faced with here is the legal construction and treatment of a boat ramp. As the

stipulations point out, the boat ramp in question is made from lumber, extending from the shore line on a downward incline into the water. The libellant was standing on the ramp and in the water when he fell, evidently hitting the ramp, although there is no allegation to that effect.

A boat ramp, like a wharf, dock, pier, or landing, is an extension of the land. It is fixed and immovable and is usually bolted or fastened securely to the land. Its purpose, of course, is to extend the land into the water at a slight grade in order to accommodate vehicular boat trailers which are backed or rolled thereon.

In *Netherlands American Steam Navigation Company v. Gallagher*, 282 Fed. Rep. 171 (1922), the court stated:

> "The injury to the plaintiff happened on the wharf—in other words, upon the land; for it is clearly established that wharves and bridges, being fixed and immovable, are a part of the land to which they are attached, whether they project over the water or not. Injuries done upon them are not maritime torts; consequently they are not within the admiralty jurisdiction, because not done upon the sea. The Rock Island Bridge, 6 Wall. 213, 18 L.Ed. 753; The Neil Cochran, 1 Brown's Adm. 162, Fed. Cas No 7.996; The Ottawa, Brown's Adm. 356, Fed. Cas. No. 10,616. In the Rock Island Bridge case the court held that, though bridges and wharves may aid

> commerce by facilitating intercourse on land, or the discharge of cargoes, they constitute no part of the high seas or navigable waters, and no maritime lien can arise with reference to them, as in the case of vessels, steamers, and rafts, and upon goods and merchandise thereon."

So it is with a boat ramp. Because it is built to the land, fixed and immovable, it is considered to be a part of the land to which it is attached, even though it is partially submerged in navigable waters. True, the boat ramp facilitates the launching and docking of pleasure craft, but it is constructed principally to receive and accommodate land carriers, mainly, boat trailers. In this respect boat ramps are analogous to wharves which are constructed to handle fork-lifts, tow-motors, and other vehicles used for loading and unloading.

> "The dividing line between the admiralty and the common-law jurisdiction is correctly stated in Benedict's Admiralty (4th Ed.) § 232. It is there pointed out that the American courts have drawn the dividing line according to the locality where the substance and consummation of the injury has occurred. . . ." *Netherlands American Steam Navigation Company v. Gallagher,* supra.

The locality test is well entrenched in the law

today. In *McGuire* v. *City of New York,* 192 F. Supp. 866 (1961), Judge Dawson said:

> "The basis for admiralty jurisdiction must be a combination of a maritime wrong and a maritime location. A maritime wrong generally has been concluded to be one which in some way is involved with shipping or commerce. . . ."

In the instant case the injury allegedly occurred while libelant was standing on the boat ramp in a few feet of water. Thus, the locality of the tort was on land or an extension thereof. No maritime wrong has occurred here, and the fact that libellant was standing in navigable waters is of little import. In *McGuire* v. *City of New York,* supra, the court stated,

> "Libelant takes the position that any tort which occurs in navigable waters is cognizable in admiralty. The Court is unable to agree with this contention."

In this same opinion, at page 871, the district court gave this summary:

> "Admiralty law is, in fact, the law of commerce. It was engendered as a result of the needs of commerce and flourished because of those same needs. Where it was feared that local ordinances or decisions might unduly impinge on international or interstate commerce, local statutes were held inapplicable

in the face of the need for uniformity in maritime law. The touchstone has been whether the action, tort for example, was not merely one of local concern but was in fact a thing having an intimate relation with navigation and interstate and foreign commerce. *Robins Dry Dock & Repair Co.* v. *Dahl,* 1925, 266 U. S. 449, 457, 45 S. Ct. 157, 69 L.Ed. 372; *Panama R. R. Co.* v. *Johnson,* 1924, 264 U. S. 375, 386, 44 S. Ct. 391, 68 L.Ed. 748; *Hartford Life Ins. Co.* v. *Douds,* 1923, 261 U. S. 476, 481, 43 S. Ct. 409, 67 L.Ed. 754. If If that was the case then admiralty was held to have sole and exclusive jurisdiction.

"Admiralty jurisdiction as a protective companion to commerce has grown with the needs of commerce and retained a marked degree of flexibility. It is proper that admiralty jurisdiction be extended where commercial necessity so dictates. Morrison, The Remedial Powers of the Admiralty, 43 Yale I. J 1, 36-38 (1923). But the guide to admiralty jurisdiction must be the needs of the sea or the needs of seagoing commerce."

This libel has no relation to a tort which arises out of navigation. It alleges an ordinary tort, just as if libelant had fallen on that part of the ramp above the water line. Thus, this action is not cognizable in admiralty and is without the maritime jurisdiction.

ORDER

Therefore, it is ORDERED that the exception to the libel be, and it is sustained and the motion to dismiss the libel is allowed.

It is further ORDERED that the foregoing shall constitute the findings of fact, conclusions of law and order for Decree in this action.

Proctors for the respondent will submit a proposed Decree in accordance with this Opinion.

The Clerk is directed to serve a copy hereof upon all proctors of record.

This the 5th day of March, 1964.

/S/ JOHN D. LARKINS, JR.

United States District Judge

IN THE

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FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION

No. 283 - Admiralty

HYLAS N. HASTINGS,
Libelant

v.

CARL D. MANN, t/a
Mann's Harbor Marina,
Mann's Harbor,
North Carolina
Respondent

DECREE

LARKINS, District Judge:

This cause having duly come on to be heard upon respondent's exception to the libel and motion to dismiss on the ground that the cause does not come within Admiralty jurisdiction, and both parties having submitted memoranda of law for the consideration of the Court, and the parties having stipulated as to the description and construction of the boat ramp in question,

a photograph of said ramp being submitted and attached thereto by the parties, said stipulation and photograph appearing of record herein, and the Court, after due deliberation, having rendered its Opinion and Order in writing, the same being filed on March 6, 1964, directing a decree dismissing the libel herein;

NOW, on motion of Martin Kellogg, Jr. and Gerald F. White, Proctors for the respondent, it is ORDERED, ADJUDGED AND DECREED that the opinion and order of this Court, heretofore filed herein on March 6, 1964, be and hereby is adopted as the Court's findings of fact and conclusions of law.

It is further ORDERED, ADJUDGED AND DECREED that this action in Admiralty be and the same hereby is dismissed and removed from the docket, and that the libelant be taxed by the Clerk with all costs of this action, including the docket fee for respondent's Proctors, as authorized by Title 28, USCA, Section 1923, and that the respondent have judgment and execution against said libelant for his, the respondent's costs.

It is further ORERED, ADJUDGED AND DECREED that unless this decree be satisfied or proceedings thereon be stayed by an appeal, as by law provided, the respondent have execution against the libellant for said costs, libelant's goods, chattels and lands, forthwith to satisfy this decree.

The Clerk is directed to serve a copy hereof upon all Proctors of record.

This the 19th day of March, 1964.

/S/ JOHN D. LARKINS, JR.

United States District Judge

To which ruling of the Court the libelant by his proctor, doth object and except.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9524.

Hylas N. Hastings,
Appellant,

versus

Carl D. Mann, t/a Mann's Harbor Marina,
Mann's Harbor, North Carolina,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AT ELIZABETH CITY. JOHN D. LARKINS, JR., DISTRICT JUDGE.

(Argued September 21, 1964. Decided January 11, 1965.)

Before HAYNSWORTH, BOREMAN and J. SPENCER BELL, Circuit Judges.

Walter B. Martin, Jr., (Vandeventer, Black, Meredith & Martin on brief) for Appellant, and Gerald F. White (Martin Kellogg, Jr., and Aydlett & White on brief) for Appellee.

HAYNSWORTH, Circuit Judge:

By a libel in Admiralty Hastings sought to recover damages for injuries he sustained when he slipped and fell upon a ramp designed for the launching of small boats in Pamlico Sound, North Carolina. At the time, he was attempting to launch his own small outboard motor boat, and he was standing in the navigable waters of the Sound when the accident occurred.

We think the District Court properly dismissed the libel as not being within the Admiralty jurisdiction.

The boat launching ramp, owned by Mann, the operator of the small boat marina, was provided for the convenience of his patrons in launching and retrieving their small boats, for which each patron paid a fee of one dollar. The ramp followed the slope of the land from a point some distance above high water to a point well below low water. No portion of it was afloat, for the underwater portion of the launching ramp was securely fastened to the bottom. It was an extension of the land, and there is no jurisdiction in Admiralty to award damages for injuries suffered upon it unless caused by a vessel.

Traditionally, Admiralty's jurisdiction to grant redress for maritime wrongs was limited to those in which the harmful effect of the wrong was suffered at sea. It was thus held in The Plymouth, 70 U. S. (3 Wall.) 20, that there was no jurisdiction in Admiralty to award damages against a vessel for loss caused by a fire which had spread to a pier and its associated warehouses from the vessel. Since the tort was consummated upon land and the injury suffered there, the tort was regarded as local in nature and not cognizable in Admiralty.

The rule of The Plymouth has been modified, of course, by the Admiralty Jurisdiction Extension Act of 1948.[1] That statute gives Admiralty jurisdiction of such torts when caused by a vessel on navigable waters. The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters.

In The Plymouth, the fire-damaged pier was treated as land. Since then, it has been uniformly held that piers, docks, wharfs and similar structures extending over navigable waters are extensions of land, though their use and purpose be maritime. Damage to such structures and personal injuries suffered by persons while upon such structures are not compensable in Admiralty, unless, under the 1948 Act, caused by a vessel on navigable waters.[2]

To come within the land extension rule, of course, the structure must be firmly attached to the land. A vessel moored to a dock does not become an extension of the land nor do other structures secured to the shore by cables, or other temporary means.[3]

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[1] 46 U.S.C.A. 740.

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[2] T. Smith & Son, Inc. v. Taylor, 276 U.S. 179; Cleveland Terminal & Valley R.R. Co. v. Cleveland Steamship Co., 208 U.S. 316; Netherlands American Steam Navigation Co. v. Gallagher, 2 Cir., 282 Fed. 171; American Export Lines, Inc. v. Revel, 4 Cir., 266 F.2d 82; McGuire v. City of New York, 192 F Supp. 866; 1 Benedict on Admiralty 354.

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[3] The Mackinaw, D.C. Ore., 165 Fed. 351; The M. R. Brazos, S.D.N.Y., Fed. Case No. 9898.

Lighthouses, beacons, buoys and other navigational aids are not encompassed within the land extension doctrine.[4] Usually, they are surrounded by water and they have historically been regarded as subjects of Admiralty jurisdiction. They are readily distinguishable from piers and wharves extending over navigable waters and designed and used for the purpose of providing access to vessels afloat for people and land based vehicles and equipment.

The launching ramp with which we deal differs, of course, from a pier or wharf, the seaward portions of which extend over navigable waters but the surfaces of which are not beneath them. That difference is immaterial. Launching ramps, both in their seaward and land portions, are as firmly fixed to the land as is the pier or the wharf. They are designed to permit land based trailers to approach to, or beyond, the water's edge so as to facilitate the launching or the recovery of the boats they are designed to carry. Their purpose and their use are as an extension of land, providing a firm means of closer approach to deep waters for boat-carrying, land based vehicles and for the people who handle them. In the application of the land extension doctrine, there appears no logical basis for distinction between a partially submerged ramp and a pier, the surface of which is dry.

The most closely analogous case we have found is that of The Professor Morse, D.C. N.J., 23 Fed. 803. It was there held that a marine railroad was an extension of the land. "Its character", said the Court, "is not changed because the ways ran down below the ebb and flow of the

[4] The Blackheath, 195 U.S. 361.

tide to facilitate the transfer of vessels from the water to the shore."

Other articles placed beneath navigable waters but affixed to the shore are not regarded as within Admiralty's jurisdiction. Thus, electric cables and pipe lines laid on the bottom beneath navigable waters and extending to the shore have been held to be extensions of land, so that damages for injury to them are not recoverable in Admiralty,[5] unless, of course, under the Admiralty Extension Act, the harm is caused by a vessel on navigable waters.

The fact that the libelant's feet were awash, when he slipped and fell on the ramp, does not alter the nature and character of the ramp or enlarge Admiralty's jurisdiction to award damages for injuries occurring upon it.[6]

The rights of the boat operator and the jurisdiction of Admiralty ought not to depend upon such empty distinctions as might be said to arise out of his immediate location on the launching ramp at the time of the injury. Whether, at the time the injury was sustained, he was above or below the high water mark, whether he was landward

[5] Nippon Yusen Kabushiki Kaisha v. Great Western Power Co., 9 Cir., 17 F.2d 239; The Russell No. 6, E.D.N.Y., 42 F. Supp. 904. (Disapproving earlier district court decisions to the contrary.)

[6] See Reinhardt v. Newport Flying Service Corp., 232 N.Y. 115, 133 N.E. 371, in which the injury to the claimant, who was waist deep in navigable waters, was held to be within Admiralty's jurisdiction only because the seaplane he was attempting to secure was held to be a vessel; McGuire v. City of New York, S.D.N.Y., 192 F. Supp. 866, in which the claim of a bather in navigable waters who stepped upon a sharp object on the bottom was held not cognizable in Admiralty.

or seaward of the actual edge of the water, his rights should be the same, and they should be determinable in the same court. Neither the purpose of the ramp nor that of the person using it varies when he moves from one portion of it to another. If his feet are awash, he is still standing upon an extension of the land in the same sense as is a worker upon a pier, who, when injured, is well seaward of both high and low water.

We think the District Court properly concluded that, since the submerged portion of the launching ramp was firmly affixed to the land, it is an extension of the land, and the plaintiff's injury is not cognizable in Admiralty.

Affirmed.